

a joinder in error entered here. The rule was, therefore, changed to the following: "that unless the plaintiffs in error appear and argue the errors to-morrow, a *non-pros.* be entered." The plaintiffs not appearing, the writ of error was non-prossed, according to the rule. 1799.

Turner, Administrator, *versus* Enrille.

ERROR from the Circuit Court of *South-Carolina*. The record, as abridged for the Judges, presented the following case:

"The Marquis de Caso *Enrille* instituted an action on the case against *Thomas Turner*, the administrator of *Wright Stanley*, in the Circuit Court of *North-Carolina*, of *June* term 1795.

"A declaration in case was filed 'by the Marquis de Caso *Enrille*, of in the island of ' of *June* term 1796, in which it is set forth, that *Wright Stanley* (the intestate) and *John Wright Stanley* and *James Greene* were 'merchants and partners at *Newbern* in the said district;' that *Wright Stanley* survived the other partners; that on the 4th of *June* 1791, in the lifetime of all the partners, they were indebted 'unto the said Marquis in dollars;' and in consideration thereof, assumed to pay, &c. The 2d count *insimul computassent*, when the said partners 'were found in arrear to the said Marquis in other dollars,' &c. The plaintiff concludes with the usual averments of non-payment, 'to the damage of the said Marquis dollars,' &c.

"On the 30th of *November* 1796, the defendant appeared, and pleaded, 1st. *Non assumpsit intest.* Replication and issue. 2d. The statute of limitations as to the intestate: Replication, *an account current between merchant and factor.* Rejoinder and issue. 3d. Set-off, that the plaintiff was indebted to the intestate, on the 1st of *January* 1792, in more than the damages by the plaintiff sustained; &c. to wit, in 4000 dollars, for money had and received by the plaintiff to the intestate's use, which sum is still due to the defendant, as administrator. Replication that plaintiff owed nothing, &c. Rejoinder and issue. 4th. The statute of limitations as to the administrator. Replication that the demand was made within three years, &c. Rejoinder and issue. 5th. *Plene administravit.* Replication assets. Rejoinder and issue.

"On the 1st of *June* 1799, the issues were tried, a verdict was given on all the issues for the plaintiff, and the jury assessed damages at 3289 $\frac{4}{10}$ dollars. Judgment for damages, costs and charges.

"Writ of error. Errors assigned: 1st. That it does not appear on the pleadings, &c. that either plaintiff or defendant was an alien or that they were citizens of different states. 2d. That there are blanks in the declaration for places, dates, and sums. 3d. The general errors. Plea, *In nullo est erratum.* Replication and issue."

For

1799. For the defendant in error, *Dallas* lamented the obvious irregularities on the face of the record, though the merits were incontestably established in his favour, by the verdict and judgment. He thought, however, that the Court would give every reasonable intendment to the allegations of the record, in support of the judgment and verdict; and, therefore, endeavoured to distinguish the present case from the case of *Bingham v. Cabot et al.* 3 *Dall. Rep.* 382. In *Bingham v. Cabot et al.* the defendant's place of residence was not even stated; here the defendants are stated to be merchants of *Newbern*, in the district of *North-Carolina*. There the plaintiffs were described generally of *Massachusetts*, &c.: here the plaintiff is described specially of *an island*; and the cause of action is found to arise on accounts between merchant and factor. It has not been judicially decided that the averment of alienage, or of citizenship of different states, as a foundation for the federal jurisdiction, must be positive; and it is sufficient, in reason, if circumstantial evidence of the fact can be collected from the record. As to the blanks in the declaration, in relation to the sums, *Dallas* requested an opportunity to consider how far the defect was cured by the verdict, or might be amended, if the Court was not decisively against him on the first point.

Ingersoll, for the plaintiff in error, observed, that the case was so very desperate, that it had been virtually abandoned by the opposite counsel. He should, therefore, decline troubling the Court.

By the COURT. The decision in the case of *Bingham v. Cabot et al.* must govern the present case. Let the judgment be reversed with costs.

Turner, Administrator of Stanley, Plaintiff in Error, *versus* the President, Directors, and Company, of the Bank of North-America, Defendants.

ERROR from the Circuit Court of *North-Carolina*. This was an action upon a promissory note drawn, in *Philadelphia*, by *Stanley*, the intestate, in favour of *Biddle & Co.* and indorsed by *Biddle & Co.* to the bank of *North-America*. The declaration (which contained only a count upon the note itself) stated, that the president and directors of the bank were citizens of the state of *Pennsylvania*; and that *Turner* the administrator, and *Stanley*, the intestate, were citizens of the state of *North-Carolina*; but of *Biddle & Co.* the payees, and indorsers of the note, there was no other designation upon the record, than "that they used trade and merchandize in partnership together, at *Philadelphia*, or *North-Carolina*." The error assigned, and insisted upon, to wit, an insufficient description of *Biddle & Co.* was founded on